10 USCS § 2667

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United States Code Service > TITLE 10. ARMED FORCES (§§ 101 — 20605) > Subtitle A. General Military Law (Pts. I — VI) > Part IV. Service, Supply, and Property (Chs. 131 — 173) > CHAPTER 159. Real Property; Related Personal Property; and Lease of Non-Excess Property (§§ 2661 — 2697)

§ 2667. Leases: non-excess property of military departments and Defense Agencies

(a) Lease authority. Whenever the Secretary concerned considers it advantageous to the United States, the Secretary concerned may lease to such lessee and upon such terms as the Secretary concerned considers will promote the national defense or to be in the public interest, real or personal property that—

(1) is under the control of the Secretary concerned;

(2) is not for the time needed for public use; and

(3) is not excess property, as defined by section 102 of title 40 [*40 USCS § 102*].

(b) Conditions on leases. A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary;

(5) may provide, notwithstanding section 1302 of title 40 [*40 USCS § 1302*] or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease;

(6) except as otherwise provided in subsection (d), shall require the lessee to provide the covered entities specified in paragraph (1) of that subsection the right to establish and operate a community support facility or provide community support services, or seek equitable compensation for morale, welfare, and recreation programs of the Department of Defense in lieu of the operation of such a facility or the provision of

such services, if the Secretary determines that the lessee will provide merchandise or services in direct competition with covered entities through the lease;

(7) may not provide for a leaseback by the Secretary concerned with an annual payment in excess of $500,000, or otherwise commit the Secretary concerned or the Department of Defense to annual payments in excess of such amount; and

(8) shall provide that any facilities constructed on the property may be constructed using commercial standards in a manner that provides force protection safeguards appropriate to the activities conducted in, and the location of, such facilities.

(c) Types of in-kind consideration.

(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned, whether or not needed for the functionality of the property or facility leased.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Provision or payment of utility services for the Secretary concerned, which shall prioritze energy resilience in the event of commerical grid outages.

(E) Provision of real property maintenance services for the Secretary concerned.

(F) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate, which may include industrial process optimization.

(G) Refurbishment of existing industrial plant equipment on the leased property.

(H) Removal and replacement of industrial plant equipment on the leased property that is at or near end-of-life.

(I) Provision of new industrial plant equipment on the leased property (including new technology), installation of such equipment, and maintenance of such equipment, but only if the title to such equipment passes to the Federal Government.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title [*10 USCS §§ 2662* and *2802*] shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(d) Community support facilities and community support services under lease; waiver.

(1) In this subsection and subsection (b)(6), the term “covered entity” means each of the following:

(A) The Army and Air Force Exchange Service.

(B) The Navy Exchange Service Command.

(C) The Marine Corps exchanges.

(D) The Defense Commissary Agency.

(E) The revenue-generating nonappropriated fund activities of the Department of Defense conducted for the morale, welfare, and recreation of members of the armed forces.

(2) The Secretary concerned may waive the requirement in subsection (b)(6) with respect to a lease if—

(A) the lease is entered into under subsection (g); or

(B) the Secretary determines that the waiver is in the best interests of the Government.

(3) The Secretary concerned shall submit, in an electronic medium pursuant to section 480 of this title [*10 USCS § 480*], to the congressional defense committees a notice of each waiver under paragraph (2), including the reasons for the waiver.

(4) The covered entities shall exercise the right provided in subsection (b)(6) with respect to a lease, if at all, not later than 90 days after receiving notice from the Secretary concerned regarding the opportunity to exercise such right with respect to the lease. The Secretary may, at the discretion of the Secretary, extend the period under this paragraph for the exercise of the right with respect to a lease for such additional period as the Secretary considers appropriate.

(5) The Secretary of Defense shall prescribe in regulations uniform procedures and criteria for the evaluation of proposals for enhanced use leases involving the operation of community support facilities or the provision of community support services by either a lessee under this section or a covered entity.

(e) Deposit and use of proceeds.

(1)

(A) The Secretary concerned shall deposit in a special account in the Treasury established for that Secretary the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under section 2668 of this title [*10 USCS § 2668*].

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that Secretary.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary concerned pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (3), (4), or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account established for the Secretary concerned shall be available to the Secretary, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Payment of utility services.

(v) Real property maintenance services.

(vi) Administrative expenses incurred by the Secretary concerned under this section and for easements under section 2668 of this title [*10 USCS § 2668*].

(D) At least 50 percent of the proceeds deposited in the special account established for the Secretary concerned shall be available for activities described in subparagraph (C) only at the military installation or Defense Agency location where the proceeds were derived.

(E) If the proceeds deposited in the special account established for the Secretary concerned are derived from activities associated with a military museum, the proceeds shall be available for activities described in subparagraph (C) only at that museum.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary concerned (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(4) Money rentals received by the United States from a lease under subsection (g) at a military installation approved for closure or realignment under a base closure law shall be deposited into the Department of Defense Base Closure Account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of *Public Law 101-510*; *10 U.S.C. 2687* note).

(f) Treatment of lessee interest in property. The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this

section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(g) Special rules for base closure and realignment property.

(1) Notwithstanding subtitle I of title 40 [*40 USCS §§ 101* et seq.] and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 [*41 USCS §§ 3101* et seq. (except *41 USCS §§ 3302*, *3501(b)*, *3509*, *3906*, *4710*, and *4711*)] (to the extent those provisions are inconsistent with this subsection) or subsection (a)(2) of this section, pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)

(A) Notwithstanding the National Environmental Policy Act of 1969 (*42 U.S.C. 4321* et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(h) Competitive procedures for selection of certain lessees; exception.

(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, or the fair market value of the lease interest exceeds $100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Paragraph (1) does not apply if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the use of competitive procedures for the selection of certain lessees is unobtainable or not compatible with the public benefit served under subparagraph (A).

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(4)

(A) Paragraph (1) does not apply to a renewal, extension, or succeeding lease by the Secretary concerned with a financial institution selected in accordance with the Department of Defense Financial Management Regulation providing for the selection of financial institutions to operate on military installations if each of the following applies:

(i) The on-base financial institution was selected before the date of the enactment of this paragraph [enacted Dec. 14, 2014] or competitive procedures are used for the selection of any new financial institutions.

(ii) A current and binding operating agreement is in place between the installation commander and the selected on-base financial institution.

(B) The renewal, extension, or succeeding lease shall terminate upon the termination of the operating agreement described in subparagraph (A)(ii) associated with that lease.

(i) Definitions. In this section:

(1) The term "administrative expenses" means only those expenses related to assessing, negotiating, executing, and managing lease and easement transactions. The term does not include any Government personnel costs.

(2) The term "community support facility" includes an ancillary supporting facility (as that term is defined in section 2871(1) of this title [*10 USCS § 2871(1)*]).

(3) The term "community support services" includes revenue-generating food, recreational, lodging support services, and resale operations and other retail facilities and services intended to support a community.

(4) The term "military installation" has the meaning given such term in section 2687 of this title [*10 USCS § 2687*].

(5) The term "Secretary concerned" means—

(A) the Secretary of a military department, with respect to matters concerning that military department; and

(B) the Secretary of Defense, with respect to matters concerning the Defense Agencies.

(j) Exclusion of certain lands. This section does not apply to oil, mineral, or phosphate lands.

(k) Leases for education. Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease, if the lease is to a local education agency or an elementary or secondary school (as those terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (*20 U.S.C. 7801*)).

History

HISTORY:

Aug. 10, 1956, ch 1041, § 1, 70A Stat. 150; Oct. 7, 1975, *P. L. 94-107*, Title VI, § 607(7), *89 Stat. 566*; Sept. 14, 1976, *P. L. 94-412*, Title V, § 501(b), *90 Stat. 1258*; Dec. 12, 1980, *P. L. 96-513*, Title V, Part B, § 511(92), *94 Stat. 2928*; Oct. 12, 1982, *P. L. 97-295*, § 1(34), *96 Stat. 1296*; Oct. 15, 1982, *P. L. 97-321*, Title VIII, § 803, *96 Stat. 1572*; Nov. 5, 1990, *P. L. 101-510*, Div B, Title XXVIII, Part A, § 2806, *104 Stat. 1787*; Dec. 5, 1991, *P. L. 102-190*, Div B, Title XXVIII, Part E, § 2862, *105 Stat. 1559*; Oct. 23, 1992, *P. L. 102-484*, Div B, Title XXVIII, Subtitle D, § 2851, *106 Stat. 2625*; Nov. 30, 1993, *P. L. 103-160*, Div B, Title XXIX, Subtitle A, § 2906, 107 Stat. 1920; Feb. 10, 1996, *P. L. 104-106*, Div A, Title XV, § 1502(a)(1), Div B, Title XXVIII, Subtitle C, §§ 2831(a), 2832, 2833, *110 Stat. 502*, 558, 559; Nov. 18, 1997, *P. L. 105-85*, Div A, Title III, Subtitle D, § 361(b)(2), Title X, Subtitle F, § 1061(a), (b), (c)(1), *111 Stat. 1701*, 1891;

Oct. 17, 1998, *P. L. 105-261*, Div B, Title XXVIII, Subtitle C, § 2821, *112 Stat. 2208*; Oct. 5, 1999, *P. L. 106-65*, Div A, Title X, Subtitle G, § 1067(1), *113 Stat. 774*; Oct. 30, 2000, *P. L. 106-398*, § 1, *114 Stat. 1654*; Dec. 28, 2001, *P. L. 107-107*, Div A, Title X, Subtitle B, § 1013, *115 Stat. 1212*; Aug. 21, 2002, *P. L. 107-217*, § 3(b)(12), *116 Stat. 1296*; Dec. 2, 2002, *P. L. 107-314*, Div A, Title X, Subtitle D, § 1041(a)(18), *116 Stat. 2645*; Nov. 24, 2003, *P. L. 108-136*, Div A, Title X, Subtitle E, § 1043(b)(15), (c)(3), *117 Stat. 1611*, 1612; Dec. 15, 2003, *P. L. 108-178*, § 4(b)(4), *117 Stat. 2641*; Oct. 17, 2006, *P. L. 109-364*, Div A, Title VI, Subtitle E, § 662, Div B, Title XXVIII, Subtitle C, § 2831, *120 Stat. 2263*, 2480; Jan. 28, 2008, *P. L. 110-181*, Div A, Title X, Subtitle F, § 1063(c)(13), Div B, Title XXVIII, Subtitle B, § 2823, *122 Stat. 544*; Oct. 14, 2008, *P. L. 110-417*, Div B, Title XXVIII, Subtitle B, § 2812(a)–(d), (f)(1), Subtitle D, § 2831, *122 Stat. 4725*, 4728, 4732; Oct. 28, 2009, *P. L. 111-84*, Div A, Title X, Subtitle F, § 1073(a)(26), *123 Stat. 2474*; Jan. 4, 2011, *P. L. 111-350*, § 5(b)(44), *124 Stat. 3846*; Jan. 7, 2011, *P. L. 111-383*, Div A, Title X, Subtitle H, § 1075(b)(41), Div B, Title XXVIII, §§ 2811(g), 2812, 2813(a), *124 Stat. 4371*, 4463; Jan. 2, 2013, *P. L. 112-239*, Div B, Title XXVII, Subtitle B, § 2712(c)(2), *126 Stat. 2145*; Dec. 26, 2013, *P. L. 113-66*, Div B, Title XXVIII, Subtitle B, § 2812, *127 Stat. 1014*; Dec. 19, 2014, *P. L. 113-291*, Div B, Title XXVIII, Subtitle B, § 2811, *128 Stat. 3700*; Nov. 25, 2015, *P. L. 114-92*, Div B, Title XXVIII, Subtitle B, § 2814, *129 Stat. 1175*; Dec. 12, 2017, *P. L. 115-91*, Div A, Title X, Subtitle H, § 1081(a)(46), (47), Div B, Title XXVIII, Subtitle B, § 2811(e), Subtitle D, § 2835, *131 Stat. 1596*, 1848, 1859; Aug. 13, 2018, *P.L. 115-232*, Div B, Title XXVIII, Subtitle A, § 2802(a), *132 Stat. 2261*; Dec. 23, 2024, *P.L. 118-159*, Div B, Title XXVIII, Subtitle C, § 2844, *138 Stat. 2263*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Explanatory notes:

Amendment Notes

1975.

1976.

1980.

1982.

1990.

1991.

1992.